

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF WILBERN JONES)	APPEAL NO. 06-A-2142
from the decision of the Board of Equalization of Idaho)	FINAL DECISION
County for tax year 2006.)	AND ORDER

VACANT LAND APPEAL

THIS MATTER came on for hearing October 23, 2007, in Grangeville, Idaho, before Board Member Vernon L. Driver. Board Members Lyle R. Cobbs and David E. Kinghorn participated in this decision. Appellant Wilbern Jones appeared for himself. Assessor Jim Beckman and Appraiser Ron Funke appeared for Respondent Idaho County. This appeal is taken from a decision of the Idaho County Board of Equalization denying the protest of the valuation for taxing purposes of property described as Parcel No. RP013800000120A.

The issues on appeal are the market value of a vacant land parcel and whether the property qualifies for an exemption pursuant to Idaho Code § 63-602FF (Property Tax Administrative Rule 635.)

The decision of the Idaho County Board of Equalization is affirmed.

FINDINGS OF FACT

The subject parcel's assessed land value is \$18,519. Appellant requests the land value be reduced to \$1,485.

The subject property, Lot 12, is a rural subdivision lot containing 2.72 acres. The subject lot is located in Flying Elk Subdivision which is in an area where there are numerous rural subdivisions.

Appellant claims the property should be partially exempt under Idaho Code § 63-602FF and Property Tax Administrative Rule 635. He further contends the assessed value is excessive as a representation of market value. Appellant also contends that nationally, housing sales are decreasing and the national market is in decline.

The County submitted a sales analysis containing eight sales. Four of the sales were improved properties and two of the sales took place in 2006. The study shows a level of assessment around 56% before the 2006 trending of subject and other lots, and a medium assessment level of 90% after the trending. Sale number 6, which was shown on the County trend report, was disregarded because it was a sale to a neighbor, rather than an arm's-length transaction.

The evidence establishes the subject parcel was assessed at \$4,346 in 2004 and that assessment was sustained by the Idaho Board of Tax Appeals. In 2005, the value was dropped by the County to \$1,143 to stay consistent with Idaho Code § 63-602FF which had recently been adopted by the State Legislature. Idaho Code § 63-602FF provided that parcels of land in a rural homesite development, which had previously been eligible for an exemption pursuant to Idaho Code § 63-602K, would continue to be eligible for an exemption until improvements were built on the lot. The Idaho State Legislature repealed that exemption in 2006, with the repeal retroactive to January 1, 2006. Consequently, that statute is not applicable to the current 2006 tax year as the applicable assessment is January 1, 2006. Idaho Code § 63-205(1).

After Idaho Code § 63-602FF was repealed in 2006, the 2004 value of \$4,346 was reinstated and a trend of 1.5 was applied to bring historic land values up to be consistent with price increases in the real estate market. The County submitted information on the trend study they conducted.

Appellant presented a newspaper article claiming a national plunge in home sales. National trends are not particularly inapplicable to a determination of the fair market value of property in Idaho County.

The Board finds Mr. Jones failed to establish the trend studies and subsequent actions

are not valid and he has failed to present factual support for his contention the assessed value is excessive.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of fair market value. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

Appellant's basic concern was that the subject property was overvalued. Idaho is a market value state for property tax purposes which is defined in Idaho Code § 63-201(10) as follows:

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

In determining the value of property, the assessor may and should consider costs, location, actual cash sale value and all other factors, known or available to his knowledge, which affect the value of the property assessed. Merris v. Ada County, 100 Idaho 59, 593 P.2d 394 (1979). The burden of proof by a preponderance of evidence lies with the party challenging the assessment to show that he is entitled to the relief claimed. The Senator, Inc., v. Ada County Board of Equalization, 138 Idaho 566, 569, 67 P.3d. 45, 48 (2003); Idaho Code § 63-511(4).

Idaho Code § 63-602FF was adopted by the 2002 Idaho Legislature. That statute required counties to treat certain vacant recreational lots as eligible for a partial exemption until construction occurred on the lots. However, the 2006 Idaho Legislature repealed that statute

and made the repeal retroactive to January 1, 2006. The subject appeal concerns the proper assessment of subject for the 2006 tax year under the tax law applicable on the assessment date.

Prior to repeal of the statute, the State Tax Commission adopted administrative rules found a IDAPA 35.01.03.635. A review of Rule 635 indicates it was adopted May 3, 2003, with some amendments occurring in April, 2005. IDAPA 35.01.03.635 clearly states Rule 635 is based upon and adopted “for the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code.” IDAPA 03.01.03.635.

The Idaho Administrative Procedure Act defines “rule” as the whole or part of an agency statement of general applicability which is promulgated in compliance with the Administrative Procedure Act and which implements, interprets or prescribes law or policy. Idaho Code § 67-5201(19). In order to promulgate rules, an agency must follow very detailed procedures, including a statement of “the statutory authority for the rulemaking.” Idaho Code § 67-5220. Various Idaho Supreme Court cases have held that administrative rules may not exceed the statutory authority granted by the Legislature for adopting the rules. Curtis v. Canyon Highway Dist. No. 4, 122 Idaho 73, 831 P.2d 541 (S.Ct. 1992); Idaho County Nursing Home, 120 Idaho 993, 821 P.2d 988 (S.Ct. 1991); Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (S.Ct. 1990). It appears the State Tax Commission had failed to repeal Rule 635 following repeal of the statutory authority to promulgate Rule 635. However, by repealing the enabling statute, the Legislature impliedly invalidated and repealed Rule 635. Consequently, that rule is inapplicable and Appellant is not entitled to a partial exemption based upon Rule 635.

Therefore, we conclude Appellant has failed to prove by a preponderance of evidence that Idaho County’s assessed value for 2006 is incorrect.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Idaho County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

DATED this 27th day of April 2007.